

Hon. Barbara J. Rothstein

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHERYL BAIR, an individual,  
  
Plaintiff,  
  
vs.  
  
SNOHOMISH COUNTY, BERLIN  
KOFOED, DOES I-X,  
  
Defendants.

No. C19-998-BJR

STIPULATED MOTION AND  
ORDER TO MODIFY THE  
SCHEDULING ORDER

**I. RELIEF REQUESTED**

Jointly, Plaintiff and Defendants respectfully ask the Court to modify its Scheduling Order, Dkt. 35, to postpone the current deadlines for expert disclosure, discovery cut-off, and discovery motions by one month. The expert disclosure deadline is currently set for July 27, 2020; the parties propose moving this date to August 26, 2020. The discovery cut-off date and discovery motions date are currently set for August 26, 2020; the parties propose moving these deadlines to September 28, 2020. The parties do not anticipate needing to change any of the additional deadlines in the Court's scheduling order at this time and, as detailed below, the parties have good cause for seeking a modification of the Court's scheduling order.

**II. STATEMENT OF FACTS**

STIPULATED MOTION AND [PROPOSED] ORDER TO  
MODIFY THE SCHEDULING ORDER - 1  
(C19-998-BJR)

Snohomish County  
Prosecuting Attorney – Civil Division  
Robert Drewel Bldg., 8<sup>th</sup> Floor, M/S 504  
3000 Rockefeller Ave  
Everett, Washington 98201-4060  
(425)388-6330 Fax: (425)388-6333

1 Plaintiff originally filed a complaint against Defendant Snohomish County and  
 2 previously named Defendant Berlin Kofoed in the Snohomish County Superior Court. Dkt.  
 3 1. The case was subsequently removed to this Court on June 26, 2019. *Id.* Plaintiff filed her  
 4 first Amended Complaint on August 6, 2019. At that time, this Court published its Order  
 5 Setting Trial Date & Related Dates, establishing deadlines for Expert Witness  
 6 Disclosure/Reports, Discovery completion, and the initial trial date of October 26, 2020. Dkt.  
 7 13.

8  
 9 Plaintiff subsequently moved to modify the scheduling order to extend the deadlines  
 10 for joining additional parties and filing amended pleadings, which the court granted. Dkt. 19.  
 11 Plaintiff added eight additional defendants. Dkt. 18. Because of the introduction of the new  
 12 defendants, the parties filed a stipulated motion to modify the scheduling order to amend the  
 13 trial date from October 26, 2020 to February of 2021. Dkt. 33. The Court granted the parties'  
 14 motion, Dkt. 35, and subsequently granted an order regarding additional pretrial deadlines,  
 15 Dkt. 46. Pursuant to those orders, the current deadline for expert disclosure and exchange of  
 16 reports is July 27, 2020; the current deadline for filing motions related to discovery is August  
 17 26, 2020; and the current discovery cut-off is also August 26, 2020.

18  
 19 The parties have all exchanged written discovery requests and Plaintiff has taken the  
 20 deposition of some of the Snohomish County witnesses. Bosch Decl., ¶ 2. On June 17, 2020,  
 21 Plaintiff served a Fed. R. Civ. P. 30(b)(6) notice on Snohomish County, which was comprised  
 22 of five topics with fifteen or more subparts; the deposition was noted for July 20, 2020. *Id.*,  
 23 ¶ 3. The following week, counsel for Defendant Snohomish County was furloughed. Bosch  
 24 Decl., ¶ 4. The parties conferred regarding discovery matters on Wednesday, July 2, 2020.  
 25  
 26

1 *Id.*, ¶ 5. During the conference, the parties discussed that it would likely not be feasible to  
 2 produce deponents to speak to all of the subjects contained within Plaintiff’s Fed. R. Civ. P.  
 3 30(b)(6) notice by July 20, 2020. The parties agreed that by seeking a one-month extension,  
 4 the parties could complete the requisite discovery in this case. *Id.*, ¶ 6.

### 5 **III. ISSUED PRESENTED**

6 Should the Court modify the Order Setting Trial Date and Related Dates to reflect a  
 7 new date for expert disclosure, discovery cut-off, and discovery related motions?  
 8

### 9 **IV. EVIDENCE RELIED UPON**

10 This motion relies upon the Declaration of Katherine Bosch in Support of this  
 11 Stipulated Motion to Modify Scheduling Order, and the pleadings, declarations, and other  
 12 evidence previously filed in this case.

### 13 **V. ARGUMENT**

14 This Court should extend the deadlines for expert disclosure, discovery cut off, and  
 15 discovery-related motions by one month, as the parties have good cause for seeking such an  
 16 extension. “Federal Rule of Civil Procedure 16(b) gives district courts wide latitude in  
 17 entering scheduling orders.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607-08  
 18 (9th Cir. 1992). Once entered, district courts may modify scheduling orders upon a showing  
 19 of “good cause.” Fed. R. Civ. P. 16(b). Good cause primarily considers the diligence of the  
 20 party seeking extension of the deadlines. “[T]he focus of the inquiry is upon the moving  
 21 party’s reasons for seeking modifications.” *Johnson*, 975 F.2d at 609.  
 22

23 The focus of the good cause analysis rests on “the diligence of the party seeking the  
 24 extension.” *Id.* Thus, the issue under Rule 16(b) is whether the “pretrial schedule . . . cannot  
 25

1 reasonably be met despite the diligence of the party seeking the extension.” *Id.* (internal  
2 quotations omitted). In the present case, Plaintiff recently propounded a Fed. R. Civ. P.  
3 30(b)(6) notice which covers a multitude of wide-ranging topics, requiring Defendant  
4 Snohomish County to prepare multiple representatives of the County to be deposed. Bosch  
5 Decl., ¶ 5. The current deadline for expert disclosure, July 27, 2020, does not afford the  
6 County sufficient time to prepare for such depositions before the expert disclosure deadline,  
7 as the parties wish to be able to supply the transcripts of these depositions to their experts  
8 prior to the deadline to exchange reports.  
9

10 Additionally, the parties have been discussing the setting of additional depositions but  
11 have encountered hurdles to scheduling those depositions as a result of COVID-19 restrictions.  
12 For example, Defendants seek to depose many of Plaintiff’s medical providers, but due to  
13 COVID-19 restrictions, some of the proposed deponents are not in the office and have been  
14 difficult to get into contact with. Bosch Decl., ¶ 5. Defendants continue to diligently contact  
15 Plaintiff’s medical providers in an effort to timely schedule depositions. A one-month  
16 extension of the expert and discovery deadlines in this case would allow the parties sufficient  
17 time to conduct discovery needed to inform the parties’ experts and to prepare for and conduct  
18 the necessary depositions in this case.  
19

## 20 VI. CERTIFICATE OF CONFERRAL

21 The parties, by and through their respective counsel, have met and conferred pursuant  
22 to Section II.C. of the Standing Order for Civil Cases, and all parties are in agreement in  
23 seeking this motion.  
24  
25  
26

**VII. CONCLUSION**

For the foregoing reasons, parties ask the Court to extend the expert disclosure deadline currently set for July 27, 2020 to August 26, 2020. The parties also ask the Court to extend the discovery cut-off date and discovery motions date currently set for August 26, 2020 to September 28, 2020. The parties do not seek a modification of any of the additional deadlines in the Court's scheduling order.

DATED this 6<sup>th</sup> day of July 2020.

FAIN ANDERSON VanDERHOEF  
ROSENDAHL O'HALLORAN  
SPILLANE, PLLC

By: /s/ Emory C. Wogenstahl  
JENNIFER SMITROVICH, WSBA  
#37062  
EMORY C. WOGENSTAHL, WSBA  
#53864  
*Attorneys for Defendant Hamadi Sisawo*

DATED this 6<sup>th</sup> day of July 2020.

ADAM CORNELL  
Snohomish County Prosecuting Attorney

By: /s/ Katherine Bosch  
BRIDGET CASEY, WSBA # 30459  
KATHERINE BOSCH, WSBA #43122  
Deputy Prosecuting Attorney  
*Attorney for Defendants Snohomish County,  
Olyntia Sewell, Jodi Martin, Taylor Jones,  
Robert Ogawa, Scott Lewis, Scott Warnken,  
and Chicara Chesney*

DATED this 6<sup>th</sup> day of July, 2020.

CIVIL RIGHTS JUSTICE CENTER,  
PLLC

By: /s/ Darryl Parker  
DARRYL PARKER, WSBA #30770  
*Attorney for Plaintiff Cheryl Bair*

**ORDER**

IT IS SO ORDERED that the parties' Stipulated Motion to Modify the Scheduling Order is APPROVED and GRANTED. The expert disclosure deadline is extended to August 26, 2020. The discovery cut-off date and date by which to file discovery deadlines is extended to September 28, 2020. All other deadlines in the Court's prior scheduling orders remain the same.

DATED this 7th day of July, 2020.

A handwritten signature in black ink, reading "Barbara J. Rothstein". The signature is written in a cursive, flowing style.

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HONORABLE BARBARA J. ROTHSTEIN  
United States District Court Judge